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Supreme Court of the United States.

OCTOBER TERM, 1915.

No. 290.

NEW YORK LIFE INSURANCE COMPANY,
Petitioner,

vs.

EFFIE J. GOULD DUNLEVY.

BRIEF FOR PETITIONER.

E. J. McCUTCHEN,
WARREN OLNEY, JR.,
CHARLES W. WILLARD,
J. M. MANNON, JR., AND
JAMES H. McINTOSH,
Attorneys for Petitioner.

Supreme Court

OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 290.

NEW YORK LIFE INSURANCE COMPANY,
Petitioner,
vs.
EFFIE J. GOULD DUNLEVY.

Brief for Petitioner.

Statement of the Case.

MAY IT PLEASE THE COURT,—

The question in this case is,—Does the judgment of the Federal District Court for California here complained of, which compels the Insurance Company to pay a second time a policy of insurance which it had already duly paid into the State Court in Pennsylvania pursuant to an order of the Pennsylvania Court made after the Company's answer to a Writ of Execution Attachment Sur. Judgment and Garnishment Process duly issued out of said Pennsylvania Court at Pittsburgh and served there upon the Company in a suit in which Mrs. Dunlevy, the plaintiff in the California suit, was defendant duly

served with process of summons and in which a judgment, the validity of which is not questioned, stood against her, deprive the Company of its constitutional rights by failing to give full faith and credit to the judicial proceedings of the Courts of Pennsylvania?

This question arises as follows,—

1. Boggs & Buhl, a Pennsylvania corporation, sued Effie J. Dunlevy, the plaintiff in this case, in the Court of Common Pleas for Allegheny County, Pennsylvania, at Pittsburgh, on an account for goods sold and delivered (p. 24 *et seq.*), and she was duly served with process of summons in said case at her then place of residence in Allegheny County, on the 24th day of June, 1907 (p. 34). July 8, 1907, judgment by default was duly entered in said Court against her for $537.76 (p. 34). The validity of said service of summons on Mrs. Dunlevy and of the judgment recovered against her is not questioned in this record (p. 124).

2. Your Petitioner, New York Life Insurance Company, became liable to pay the value of its policy No. 305,011 (p. 47 *et seq.*) on the life of Joseph W. Gould, the father of Mrs. Dunlevy, at the expiration of its tontine period, January 24, 1909, but was prevented from promptly paying it because of the conflicting claims thereto of Mrs. Dunlevy on the one hand and of the insured, her father, on the other.

3. The rival claims of Mrs. Dunlevy and of her father to the proceeds of said policy were as follows,—

Mrs. Dunlevy claimed the proceeds thereof under an assignment of it to her (p. 58), which her father executed in 1893 when she was only thirteen years old (p. 121), but which (p. 120) he never delivered to her. He filed the assignment with the Company in 1893 (p. 58), but she knew nothing about the assignment until notified thereof by the Company at the maturity of the policy.

He never delivered either the policy or the assignment to her (p. 120 *et seq.*).

Mr. Gould claimed the proceeds of the policy on the ground (p. 120 *et seq.*) that by the assignment he did not intend to pass any title to the policy except in the event of his death before its maturity, and that neither the assignment nor the policy ever was delivered to her, and that he paid all the premiums.

4. While this dispute between the rival claimants was going on, Boggs & Buhl, November 11, 1909 (p. 38), duly caused to be issued out of said Court in said case of Boggs & Buhl against Effie J. Dunlevy and served upon the Company at Pittsburgh (p. 38) a Writ of (p. 61) Execution Attachment Sur. Judgment and Garnishment Process, thereby attaching (p. 37) "all and singular the debts due to said defendant," Effie J. Dunlevy, and duly citing the Company to (p. 37) "appear before our said Court to be holden at Pittsburgh in and for said County on the first Monday of December next, to show cause why the judgment aforesaid should not be levied of the effects of said defendant in their hands," and at the same time duly filed and served upon the Company interrogatories (p. 38 *et seq.*) to be answered by it as garnishee with respect of any indebtedness it then owed Mrs. Dunlevy, the judgment debtor.

5. February 5, 1910, the Company duly filed its written answer as garnishee and its answer to said interrogatories (*pp.* 40 *to* 68, *inclusive*), therein and thereby admitting its indebtedness on account of said policy and alleging its readiness to pay, but fully setting forth the conflicting claims thereto of said rival claimants and concluding its answer with the following prayer (p. 47),—

> "Wherefore said garnishee having fully answered prays that it may be duly advised as to its rights and duties in the premises, and that upon its discharge it may be allowed a reasonable sum for its costs and disbursements."

6. With its answer as garnishee the Company filed in said case of Boggs & Buhl against Dunlevy a petition setting forth said rival claims of Effie J. Dunlevy, on the one hand, and said Joseph W. Gould, on the other, to the proceeds of said policy, and praying (p. 73),—

> "Your Honorable Court for a rule on said Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in the hands of petitioner belongs, and why your petitioner should not be permitted, when it is determined to whom the money ought to be paid, to pay the said sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars into Court for the benefit of such person as shall appear to be entitled thereto, and for such further orders in the premises as to your Honors may seem necessary."

Thereupon the Court that day made the following order (p. 74),—

> "And now, to wit, February 5th, 1910, the foregoing petition of the New York Life Insurance Company, Garnishee, being presented in open Court, upon consideration thereof, and on motion of Gordon & Smith, attorneys for petitioner, a rule is granted on Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in the hands of the New York Life Insurance Company belongs, and why said Company should not be permitted, when it is determined to whom the money ought to be paid, to pay said sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars into Court for the benefit of such person as shall appear to be entitled thereto. And it appearing that the said Effie J. Dunlevy is a resident of the State of California, it is hereby ordered and decreed that service of said rule upon Effie J. Dunlevy be by serving her personally with a copy of this petition

and order, or by sendig a copy of the same by mail or registered mail, to her last known address.

"Rule returnable the 26th day of February, 1910."

7. Effie J. Dunlevy was duly and personally served in San Francisco, California, February 18, 1910 (p. 77 *et seq.*) with written notice that in said case of Boggs & Buhl against her (p. 78) "a rule to show cause why Effie J. Dunlevy, Jos. W. Gould and Boggs & Buhl, Incorporated, should not interplead together for the purpose of ascertaining to which of said parties $2,479.70 in the hands of the New York Life Insurance Company belongs, has been granted in the above-entitled case returnable February 26, 1910," and a copy of the petition upon which the Court made said order to show cause and of said order itself was there and then duly served on her, but she never paid any attention thereto, nor came into the Pittsburgh Court to protect her interests.

8. February 23, 1910, the Lincoln National Bank, another creditor of Mrs. Dunlevy, sued her at Pittsburgh and there garnished the Company (p. 94), and on the same date Charles Elste, still another creditor of Mrs. Dunlevy, brought another suit and (p. 94) garnished the Company.

Thereupon and on the 19th of March, 1910, the Company filed another petition in said suit of *Boggs & Buhl v. Dunlevy* (p. 93), therein directing the Court's attention to its said petition of February 5, 1910, and the allegations thereof and the order made thereon, and therein further alleged the serving upon it of said writs of garnishment in said several suits of the Lincoln National Bank and Charles Elste against said Effie J. Dunlevy, concluding with the following prayer (p. 94),—

"Wherefore, your petitioner prays your Honorable Court to make an order permitting it to pay the sum of Two Thousand Four Hundred Seventy-nine and Seventy One-Hundredths ($2,479.70) Dollars into this Court, to abide the result

> of the Issue to be framed by the Court, and for such other and further relief as the nature of the case may require."

And thereupon in said case of *Boggs & Buhl v. Effie J. Dunlevy* the Court made the following order (p. 95),—

> "And now, to wit, March 19, 1910, the foregoing petition of the New York Life Insurance Company, garnishee, presented in open Court, and it appearing that the consent of the Lincoln National Bank of Pittsburgh and of Charles Elste, has been obtained, upon consideration thereof, and upon motion of Gordon & Smith, attorneys for petitioner, it is ordered, adjudged and decreed that the New York Life Insurance Company be given leave to pay the sum of Two Thousand Four Hundred Seventy-nine and Seventy One-Hundredths ($2,479.70) Dollars into this Court, to abide the result of the issue to be framed by this Court."

9. Thereafter and on the 21st day of March the Company, as garnishee, duly paid the proceeds of said policy into said Court to the credit of the case of *Boggs & Buhl v. Effie J. Dunlevy,* as is shown by the Clerk's entry therein as follows (p. 36),—

> "Mch. 21, 1910, Received of Gordon & Smith, attys. for New York Life Insurance Co., the sum of Twenty-four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars, less poundage on same, leaving the sum of Twenty-four Hundred Seventy-one and 70/100 ($2,471.70) Dollars, which sum I have deposited subject to the further order of Court."

10. What was done about the proceeds of this policy after the Company as garnishee thus paid it into the Pittsburgh Court, is wholly immaterial in this suit brought by Mrs. Dunlevy to collect it again, because she does not claim that she was not regularly served with process of summons in the suit of Boggs & Buhl against her in the Pittsburgh Court, nor does she claim that the judgment therein rendered against her was invalid or for any reason not binding. Hence when the Company

paid what it owed her into that Court, pursuant to said writ of Execution Attachment Sur. Judgment and Garnishment Process and said order of the Court, it paid it to her.

The judgment complained of is based solely on what the Pittsburgh Court did after the Company as garnishee discharged its obligation to Mrs. Dunlevy by paying the proceeds of the policy into Court, pursuant to proper legal process and the Court's order, to the credit of a cause to which she was a party as a judgment debtor. But for the convenience of the Court we here state what these things subsequently done were, at all times, however, denying that they have anything whatever to do with the Company's rights here, as follows,—

(*a*) The same day that the Court ordered the Company to pay the proceeds of the policy into Court in the *Dunlevy* case, the Court also made an order in that case that (p. 36) a "feigned issue" be made up and tried for the purpose of determining what the Court should do with the money thus paid into Court. Although this feigned issue was put upon a docket apparently kept in the Pittsburgh Court for the purpose of trying such questions as they arose in cases regularly pending in the Court, it was not an independent case but like any reference was in legal effect merely an inquiry in the case of *Boggs & Buhl v. Dunlevy* for the purpose of finding out to whom the money paid into Court in that case belonged, all the parties claiming the fund being in Court in that case, or assenting to the payment into Court in that case and to the Court's inquiry.

Boggs & Buhl and Mrs. Dunlevy were in Court in that case as parties thereto. Mr. Gould was in Court in that case as a garnishee and also assented to the inquiry and took part in it (pp. 41, 42 and 74). The Lincoln National Bank assented in writing to the payment of the money into Court in Boggs & Buhl against Dunlevy and intervened therein (p. 36), and so did Charles Elste (p. 95).

(*b*) May 3, 1910, the Court entered an order in the

case of *Boggs & Buhl v. Dunlevy*, stating how the issue therein was to be tried, as follows (p. 36),—

> "It is ordered that the issue to be tried in this case shall be as follows, to wit, whether Joseph W. Gould made a valid gift of policy No. 305,011 issued to him by the New York Life Insurance Co. to Effie J. Gould, now Effie J. Dunlevy. All attaching creditors of said Effie J. Dunlevy, who desire to intervene in this proceeding are required to do so as plaintiffs herein on fifteen (15) days' notice to the attys. of record, and to file their statements of claim or demand within said period of fifteen (15) days."

(*c*) The issue as to the right of the several claimants was tried September 19, 1910, and found in favor of Mrs. Dunlevy's father, the insured (p. 98). Mrs. Dunlevy did not appear. Thereafter the Court entered the following judgment in the case of *Boggs & Buhl v. Dunlevy* (p. 36),—

> "And now, Oct. 1, 1910, it is ordered, adjudged and decreed that Wm. B. Kirker, Pro., pay to Joseph W. Gould, or to his attorney, L. B. D. Reese, forthwith, the sum of $2,471, that being the amount received by said Prothonotary from the New York Life Insurance Company Mar. 21, 1910, less his poundage, viz., $8.70, by virtue of an order of this Court, date March 19, 1910, said money having been paid to said Prothonotary by said Insurance Company."

11. Mrs. Dunlevy commenced this suit in California to recover the proceeds of said policy January 14, 1910 (p. 4), after the Writ of Execution Attachment Sur. Judgment and Garnishment Process had been served as aforesaid in said Boggs & Buhl suit against her in Pittsburgh.

The Company answered in California April 1, 1910 (p. 19), in its answer alleging said judgment against Mrs. Dunlevy in said case of Boggs & Buhl against her at Pittsburgh, the service therein of said Writ of Execution Attachment Sur. Judgment and Garnishment Process, its answer to said writ, said order of the Court

directing it to pay, and its payment of, the proceeds of said policy into said Court in said cause. After the Pittsburgh Court, September 19, 1910 (p. 100), decided the issue in the *Boggs & Buhl* case as to the conflicting claims to the proceeds of the policy, the Company filed herein an Amended Answer (p. 19), and attached to and made a part thereof and put in evidence on the trial (*pp.* 24 *to* 111, *inclusive*), a duly certified transcript of the entire proceedings in the case of *Boggs & Buhl v. Dunlevy* in the Pittsburgh Court as its defence to this suit.

In deciding the case against the Company, the learned Trial Court, as well as the majority of the Circuit Court of Appeals, missed entirely the controlling point, namely, that by paying the proceeds of the policy into Court in Pittsburgh under the circumstance aforesaid, the Company paid it to Mrs. Dunlevy if it owed it to her. Passing by this, the Court dealt only with what the Pittsburgh Court did after the Company discharged its obligation by paying the proceeds of the policy into Court, and treating the issue framed in the *Boggs & Buhl* suit as to the right to the proceeds of the policy as an original suit, held that the judgment therein was not binding on Mrs. Dunlevy because she was not personally served with process of summons and did not appear.

Specifications of the Errors Relied Upon.

Your petitioner relies upon its several assignments of errors numbered respectively I, II, IV and VIII, as follows (p. 130),—

I.

The District Court above named for the Northern District of California, Second Division, erred in entering judgment in favor of plaintiff and against said defendant, New York Life Insurance Company, a corporation, upon the agreed facts.

II.

The said Court erred in entering judgment in favor of plaintiff and against the defendant, New York Life Insurance Company, a corporation, and the defendant, Joseph W. Gould, upon the agreed facts.

IV.

The decision was contrary to and against law, because said Court erred in making, giving, rendering and entering judgment in favor of plaintiff and against defendant, New York Life Insurance Company, and erred in failing to give, make, render and enter its judgment in favor of said defendant.

VIII.

Said Court erred in rendering judgment in favor of plaintiff and against said defendants, New York Life Insurance Company, a corporation, and Joseph W. Gould, because it appears from the undisputed facts of the case that on or about the 19th day of September, 1910, it was adjudicated by a Court of competent jurisdiction that plaintiff had no right, title or interest in and to the proceeds of said life insurance policy as more fully appears from Exhibit "A" to the amended answer to said New York Life Insurance Company on file herein."

BRIEF OF THE ARGUMENT.

I.

The Trial Court should have given the proceedings in the Pennsylvania Court the same faith and credit accorded them by law or usage in the courts of Pennsylvania.

Federal Constitution, Art. IV, Sec. 1.
Revised Statutes of the United States, Sec. 905.
Crapo v. Kelly, 16 *Wall.,* 610.
Hancock National Bank v. Farnum, 176 *U. S.,* 640.
Harris v. Balk, 198 *U. S.,* 215.
Converse v. Hamilton, 224 *U. S.,* 243.
Michigan Trust Co. v. Ferry, 228 *U. S.,* 346.

II.

The proceedings in the Pennsylvania Court were regular in every way and conformed to the law and usage of the courts of Pennsylvania.

In the absence of countervailing evidence, the Court will presume that the Pennsylvania Court proceeded regularly and in accordance with the law and usage of the Court, if it appears that the Court had jurisdiction of the subject matter and of the parties.

Wright v. Southern Railway Co., 141 *N. C.,* 164.

> "It is a strong thing for another tribunal to say that the local Court did not know its own business under its own laws."

Michigan Trust Co. v. Ferry, 228 *U. S.,* 346.

The record affirmatively shows that the Pennsylvania Court had jurisdiction in the Boggs & Buhl suit over both Mrs. Dunlevy and the Company, and proceeded in accordance with the law and usage of the Pennsylvania Courts, and this is not disputed in this record.

In the case of *Boggs & Buhl v. Dunlevy,* the plaintiff (p. 24) filed its Statement of Claim June 18, 1907, and the same date a Summons for the defendant was duly issued to the Sheriff, who returned it endorsed as follows (p. 34),—

> "Served the within writ June 24th, 1907, on Effie J. Dunlevy, defendant, by handing a true and attested copy thereof to an adult member of her family at her dwelling-house."

The laws of Pennsylvania provide for such service of Summons as follows,—

> "The writ of summons * * * may be served by the Sheriff of the county wherein it is issued upon an individual defendant * * * by handing a true and attested copy thereof to an adult member of his family at his dwelling-house."

Purdon's Digest, 236, *Sec.* 1.

The Summons cited Mrs. Dunlevy to appear and answer the first Monday in July, but she made default; and July 8 the Court (p. 24) entered "Judgment against defendant in default of appearance for $537.76."

This judgment conformed to the laws of Pennsylvania.

Purdon's Digest, 244, *Sec.* 42.

The Writ of Execution Attachment Sur. Judgment and the Garnishment Process against the Company issued in the case of *Boggs & Buhl v. Dunlevy* and served on the Company, are authorized by and conform to the laws of Pennsylvania.

Purdon's Digest, 1533, *Sec.* 48; 1712, *Sec.* 1; 263, *Sec.* 101.

November 1, 1909, the Sheriff duly served on the Company the Execution Attachment Sur. Judgment, the Garnishment Summons and the Interrogatories (p. 38). The effect of this service was that "all debts * * * belonging or due to defendant by the person or corporation upon which service shall be so made shall remain attached in the hands of such corporation or person in the manner heretofore practiced and allowed in a case of foreign attachment."

Purdon's Digest, 1538, *Sec.* 50.

The interpleader procedure was in accordance with the settled practice of the Pennsylvania Courts and with "the equitable principles of our common law."

Brownfield v. Cannon, 25 *Pa.*, 299.
Fish v. Keeney, 91 *Pa.*, 138.
McMunn v. Carothers, 4 *Clark*, 354.
Wasserman v. Bank, 3 *W. N. C.*, 475.
Wilbraham v. Horrocks, 14 *Phila.*, 191.
Troubat & Haly's Practice, *Vol.* 1, *Page* 270.

The Company's Petition for leave to pay into Court the money it owed Mrs. Dunlevy and which Boggs & Buhl, her judgment creditor, had attached in its hands, the order of the Court made on said petition, and the payment of the money into Court to the credit of the case of *Boggs & Buhl v. Dunlevy*, conform to the law and usage of the Pennsylvania Courts. In that State when funds in the hands of a garnishee are claimed by a third party, it is the settled practice to permit the garnishee to pay the money into Court and to award an issue between the rival claimants, the payment into Court discharging the garnishee and relieving it from further attendance.

Good v. Grant, 76 *Pa. St.*, 52.
Conshohocker Tube Co. v. Iron Car Co., 167 *Pa.*, 592.
Wilson v. Mayhew, 6 *Phila.*, 273.

Wasserman v. Bank, 3 *W. N. C.*, 475.
Hiller v. Good, 9 *Lanc. Bar.*, 129.
Fish v. Keeney, 91 *Pa.*, 138.
Wright v. McGarry, 2 *Chester*, 467.
Dever v. Rice, 19 *W. N. C.*, 156.
Rothchild v. Morrison, 9 *Lanc. L. Rev.*, 74.
Rodgers v. Santa Clause Co., 27 *W. N. C.*, 574.
Stockham v. Pancoast, 1 *D. R.*, 135.
Stern v. Jones, 7 *Kulp.*, 19.
Kistler v. Thompson, 3 *Lack. Jur.*, 341.
Gwinners' App., 50 *P. L. J.*, 421.
Wilbraham v. Horrocks, 14 *Phila.*, 191.

All the above are Pennsylvania decisions, but most of them are decisions of *nisi prius* Courts. Cases on this general subject have not many of them reached the Court of last resort in Pennsylvania apparently because the procedure which they illustrate and to which the procedure in this case conformed is so well-settled in that State that lawyers have not often thought of raising any question about it. So far as the Court of last resort in Pennsylvania is concerned, the above cited cases are the only decisions I have found bearing upon the question of the procedure in *Boggs & Buhl v. Dunlevy*. To the extent these Supreme Court decisions bear upon the issues in the present suit they are as follows,—

In *Good v. Grant*, 76 *Pa.*, 52, the head-note is as follows,—

> "Peter Dickinson borrowed $1,000 from Samuel Dickinson and conveyed to him land as security. William G. Grant & Son recovered judgment against Peter Dickinson in January, 1869. Samuel Dickinson afterwards conveyed the land to George S. Good, who, with Peter Dickinson's consent, gave notes to Samuel Dickinson for $1,100, part of the consideration. These notes being unpaid, William G. Grant & Son, alleging the money due by George S. Good belonged to Peter Dickin-

son, issued an attachment execution against Peter Dickinson making George S. Good garnishee; he paid the money into Court and pleaded '*Nulla Bona.*' Held, that by paying the money into Court George S. Good admitted he owed it; the contest was then between William G. Grant & Son and Samuel Dickinson, the issue should have been formed and tried between them and George S. Good relieved from further costs."

In the opinion the Court said,—

> "The contest then really was between the defendants in error as attaching creditors of Peter Dickinson as one party and Samuel Dickinson as the other party. The issue should have been formed and tried between them. *By paying the money into Court, Good admitted his liability to pay the judgments; although it is said the 'Court directed' him so to pay it in, we will not assume this direction to have been made without his request. The garnishee should then have been relieved from further costs.* The contest should have been carried on in form, as it was in fact, between the two parties claiming the fund."

In *Fish v. Keeney*, 91 *Pa.*, 138, the head note which correctly reflects the Court's decision, says,—

> "A feigned issue should be framed between the opposing claimants of the money so far as they are known to the Court. It was error to make a garnishee a party to the issue and subject him to the expense and costs, when he made no claim to the fund and was in no default."

Conshohocken Tube Co. v. Iron Car. Co., 167 *Pa.*, 539, was an appeal by garnishees from a judgment against them in favor of the attaching creditor where their answer admitted an indebtedness to which a third party claimed title. The Supreme Court held it was erroneous to enter a judgment against a garnishee in such case and that "the rule for judgment should be discharged and the title to the fund determined by an issue tried before a jury."

The decisions of the *nisi prius* Courts of Pennsylvania above cited illustrate the usage of those Courts in cases of this sort, and all are in accord with what was here done.

III.

By the law and usage of the Pennsylvania courts and every other court the company discharged its obligation to Mrs. Dunlevy when, pursuant to the writ served upon it and the order of the Court, it paid what it owed her into court to the credit of the cause to which she was a party and in court.

This is not merely a law and usage of the Pennsylvania Courts as the Pennsylvania cases already cited show, but it is a rule that obtains in every Court. "This is one of the decencies of civilization that no one would dispute. It applies to Article 4, §1, of the Constitution, *so that if a judicial proceeding is begun with jurisdiction over the person of the party concerned, it is within the power of a state to bind him by every subsequent order in the cause.*"

Michigan Trust Co. v. Ferry, 228 *U. S.*, 346.

When the Company paid the money into Court where she was it was just the same in legal effect as if it had paid it to her.

The service of the Writs of Attachment and Garnishment was equivalent to an assignment by Mrs. Dunlevy to Boggs & Buhl of her claim against the Company, and after the levy of the attachment Boggs & Buhl stood in her shoes. Hence by paying the money into Court pursuant to the Court's order, the Company discharged its obligation to Mrs. Dunlevy. This is the law of Pennsylvania.

Roig v. Tim, 103 *Pa. St.*, 115.

Reed v. Penrose's Executors, 2 *Grant*, 472.
Malvin v. Sweitzer, 1 *Kulp.*, 5.
Stover v. Stover, 3 *Del. Co. Rep.*, 290.
Wells v. Tuck, 1 *Kulp.*, 154.
Estate of Ficken, 16 *Phila. Rep.*, 269.

In *Roig v. Tim*, 103 *Pa. St.*, 115, the Court said,—

> *"The service of an attachment execution has the effect of an equitable assignment of the thing attached. It puts the garnishee in the relation to the attaching creditor which he had sustained to his former creditor."*

In *Reed v. Penrose's Executors*, 2 *Grant*, 472, the Court said,—

> "It may be premised that the effect of an attachment execution, served wherever it lies, is to place the attaching creditor in the same relation to the garnishee as that occupied by the debtor before the attachment was laid. *In re Baldwin's Estate*, 4 *Barr*, 248. The attachment is an equitable assignment of the thing attached; a substitution of the creditor for the debtor to the latter's rights against the garnishee."

In *Stover v. Stover*, 3 *Del. Co. Rep.*, 290, the Court said,—

> "Pending the attachment the rights of the parties are *sub judice* and the garnishee becomes a stakeholder of the thing attached. There is no method by which he can divest himself of this responsibility imposed by the statute other than to pay the money into Court or by obtaining a dissolution of the attachment * * *. The attaching creditor steps into the shoes of his debtor and becomes invested with all his rights; the attachment is in effect an assignment of the thing attached."

The Company did here precisely what the law and usage of the Pennsylvania Courts required it to do. Mrs. Dunlevy was in the Pennsylvania Court and was bound

by every order that Court made whether she remained within the jurisdiction of that Court after it got jurisdiction over her person or not.

Michigan Trust Co. v. Ferry, 228 *U. S.*, 346.

And when the Company, acting in obedience to an order of the Court which was binding on it and on her, paid into Court where she was what she claims it owed her and she neglected there to assert her rights, it discharged its obligation to her, and the Constitution and the law will not permit her to make it pay again by suing it in another jurisdiction.

IV.

The Court did not give the proceedings in the Pennsylvania court the same faith and credit accorded them by the law and usage of the courts of Pennsylvania. Hence it denied the company its constitutional rights and this judgment should be reversed.

Respectfully submitted,

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EFFIE J. GOULD DUNLEVY, RESPONDENT.

MEMORANDUM OF CASES FOR RESPONDENT.

Ferguson *v.* Stever, 40 Pa. (4 Wright), 213.
Oklahoma City *v.* McMaster, 196 U. S., 529.
Saylor *v.* Hicks, 36 Pa., 392.
Baker *v.* Williamson, 3 Pa., 116.
Baker *v.* Williamson, 4 Pa., 456.
Taylor's Appeal, 39 Pa., 495.
Nichols *v.* McDonald, 101 Pa., 514.
Null *v.* Fries, 110 Pa., 521.
Woods *v.* Reynolds, 7 Watts & S., 407.
Ridgway's Appeal, 15 Pa. St., 181.
Bolt *v.* Proctor, 45 Fed., 515 (p. 517).

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